

holding company system, nor covered by deposit insurance.

(c) The notes would be generally available for sale to members of the public, but only at offices of the holding company and its nonbanking subsidiaries. Although offices of the holding company may be in the same building or quarters as its banking offices, they would be physically separated from the banking offices. Sales would be made only by officers or employees of the holding company and its nonbanking subsidiaries. Initially, the notes would only be offered in the State in which the holding company was principally doing business, thereby complying with the exemption provided by section 3(a)(11) of the Securities Act of 1933 (15 U.S.C. 77c) for “intra-state” offerings. If it was decided to offer the notes on an interstate basis, steps would be taken to register the notes under the Securities Act of 1933. Funds from the sale of the notes would be used only to supply the financial needs of the nonbanking subsidiaries of the holding company. These nonbank subsidiaries are, at present, a small loan company, a mortgage banking company and a factoring company. In no instance would the proceeds from the sale of the notes be used in the bank subsidiaries of the holding company nor to maintain the availability of funds in its bank subsidiaries.

(d) The sale of the thrift notes, in the specific manner proposed, is an activity described in section 20 of the Banking Act of 1933 (12 U.S.C. 377), that is, “the issue, flotation, underwriting, public sale or distribution \* \* \* of \* \* \* notes, or other securities”. Briefly stated, this statute prohibits a member bank to be affiliated with a company “engaged principally” in such activity. Since the continued issuance and sale of such securities would be necessary to permit maintenance of the holding company’s activities without substantial contraction and would be an integral part of its operations, the Board concluded that the issuance and sale of such notes would constitute a principal activity of a holding company within the spirit and purpose of the statute. (For prior Board decisions in this connection, see 1934 Federal Reserve Bul-

letin 485, 12 CFR 218.104, 12 CFR 218.105 and 12 CFR 218.101.)

(e) In reaching this conclusion, the Board distinguished the proposed activity from the sale of short-term notes commonly known as *commercial paper*, which is a recognized form of financing for bank holding companies. For purposes of this interpretation, *commercial paper* may be defined as notes, with maturities not exceeding nine months, the proceeds of which are to be used for current transactions, which are usually sold to sophisticated institutional investors, rather than to members of the general public, in minimum denominations of \$10,000 (although sometimes they may be sold in minimum denominations of \$5,000). Commercial paper is exempt from registration under the Securities Act of 1933 by reason of the exemption provided by section 3(a)(3) thereof (15 U.S.C. 77c). That exemption is inapplicable where the securities are sold to the general public (17 CFR 231.4412). The reasons for such exemption, taken together with the abuses that gave rise to the passage of the Banking Act of 1933 (“the Glass-Steagall Act”), have led the Board to conclude that the issuance of commercial paper by a bank holding company is not an activity intended to be included within the scope of section 20.

(Interprets and applies 12 U.S.C. 377 and 1843)

[Reg. Y, 38 FR 35231, Dec. 26, 1973]

**§ 250.240 Applicability of section 23A of the Federal Reserve Act to transactions between a member State bank and its “operations subsidiary”.**

(a) The Board of Governors has recently considered whether section 23A of the Federal Reserve Act (12 U.S.C. 371c) applies to extensions of credit by a member State bank to its operations subsidiary.

(b) Section 23A imposes limitations (in terms of security and amount) on a federally insured bank’s loans to and investments in its affiliates. The principal purpose of section 23A is to safeguard the resources of a bank against misuse for the benefit of organizations under common control with the bank. It was designed to prevent a bank from

risking too large an amount in affiliated enterprises and to assure that extensions of credit to affiliates will be repaid—out of marketable collateral, if necessary.

(c) Since 1968 the Board has permitted member banks to establish and own operations subsidiaries—that is, organizations designed to serve, in effect, as separately incorporated departments of the bank, performing, at locations at which the bank is authorized to engage in business, functions that the bank is empowered to perform directly (12 CFR 250.141). Since an operations subsidiary is in effect a part of, and subject to the same restrictions as, its parent bank, there appears to be no reason to limit transactions between the bank and such subsidiary any more than transactions between departments of a bank.

(d) Accordingly, the Board has concluded that a credit transaction by a member State bank with its operations subsidiary (the authority for which is based on the 1968 ruling) is not a “loan or \* \* \* extension of credit” of the kind intended to be restricted and regulated by section 23A and is, therefore, outside the purview of that section.

[35 FR 10201, June 23, 1970]

**§250.241 Exclusion from section 23A of the Federal Reserve Act for certain transactions subject to review under the Bank Merger Act.**

(a) *Grant of Exemption.* Section 23A of the Federal Reserve Act shall not apply to a transaction between affiliated insured depository institutions if the transaction has been approved by the appropriate federal banking agency pursuant to the Bank Merger Act.

(b) *Definitions.* For purposes of this section, the terms “appropriate federal banking agency” and “insured depository institution” are defined as those terms are defined in section 3 of the Federal Deposit Insurance Act.

[57 FR 41644, Sept. 11, 1992]

**§250.242 Section 23A of the Federal Reserve Act—definition of capital stock and surplus.**

(a) An insured depository institution’s capital stock and surplus for purposes of section 23A of the Federal Reserve Act (12 U.S.C. 371c) is:

(1) Tier 1 and Tier 2 capital included in an institution’s risk-based capital under the capital guidelines of the appropriate Federal banking agency, based on the institution’s most recent consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3); and

(2) The balance of an institution’s allowance for loan and lease losses not included in its Tier 2 capital for purposes of the calculation of risk-based capital by the appropriate Federal banking agency, based on the institution’s most recent consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3).

(b) For purposes of this section, the terms *appropriate Federal banking agency* and *insured depository institution* are defined as those terms are defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

[61 FR 19806, May 3, 1996]

**§250.250 Applicability of section 23A of the Federal Reserve Act to a member State bank’s purchase of, or participation in, a loan originated by a mortgage banking affiliate.**

(a) A question has been raised as to whether a member bank’s purchase, without recourse, and at face value, of any mortgage note, or participation therein, from a mortgage banking subsidiary of its parent bank holding company at the inception of the underlying mortgage loan involves a “loan” or “extension of credit” from the member bank to the affiliate within the meaning of section 23A of the Federal Reserve Act (12 U.S.C. 371c). In the given circumstances, the affiliate originated the mortgage loans at premises other than an office of the member bank and hence was not a company furnishing services to or performing services for the holding company or its banking subsidiaries within the meaning of section 4(c)(1)(C) of the Bank Holding Company Act (12 U.S.C. 1843(c)(1)(C)). Loans or extensions of credit to the affiliate were therefore not entitled to exemption from the provisions of section 23A by virtue of subsection (1) of the final paragraph thereof.

(b) Paragraph 4 of section 23A provides that the term *extension of credit*